

APPEAL NO. 010198

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on December 28, 2000, the hearing officer resolved the sole disputed issue by determining that the appellant's (claimant) compensable injury is not a producing cause of the claimant's low back and hip pain, pain to his left leg, and numbness and tingling of the toe. The claimant has filed a request for review, asserting that the hearing officer's decision was influenced by the respondent's (carrier) attorney rather than the facts. The carrier filed a response.

DECISION

A timely appeal not having been filed with the Texas Workers' Compensation Commission (Commission) and the jurisdiction of the Appeals Panel not having been properly invoked, the decision and order of the hearing officer have become final.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994.

Records of the Commission reflect that the hearing officer's decision was distributed to the parties on January 5, 2001, under a cover letter of the same date. The claimant states that he received the hearing officer's decision on January 9, 2001. Accordingly, he had 15 days, or until January 24, 2001, to file his request for review. The claimant's request for review is accompanied by two envelopes which, together, reflect that he mailed his request for review on January 22, 2001; that he apparently failed to use the Commission's correct address; that the request for review was returned to the claimant for additional postage; and that the claimant remailed his request for review on January 30, 2001, and it was received by the Commission on February 1, 2001. Since both his mailing date and the receipt date at the Commission were untimely under Rule 143.3(c), the claimant's request for review was not timely filed.

The decision and order of the hearing officer have become final pursuant to Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge